PD-1037-16
COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
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CAUSE NO. PD-1037-16

IN THE TEXAS COURT OF CRIMINAL APPEALS
STATE OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
11/2/2017
DEANA WILLIAMSON, CLERK

STATE OF TEXAS, Appellant

V.

REINALDO SANCHEZ, Appellee

APPEAL OF TRIAL COURT CASE NO. 13-15-00288-CR
FROM THE THIRTEENTH COURT OF APPEALS
STATE OF TEXAS

APPELLEE'S MOTION FOR REHEARING

Victoria Guerra
3219 N. McColl
McAllen, TX 78501
(956) 618-2609
(956) 618-2553 (fax)
State Bar Number: 08578900
Attorney for Appellee

GROUNDS FOR APPELLANT'S MOTION FOR REHEARING

1. This Court reversibly erred by substituting its judgment for the Trial Court's findings of facts and conclusions of law which were adopted by the Court of Appeals.

2. This Court violated Art. 5, § 6(a), Tex. Const. by substituting its own fact findings for that of the Trial Court as adopted by the Court of Appeals.

3. This Court has no constitutional or statutory authority to substitute its judgment and fact findings for that of the Trial Court.

ARGUMENT

Standard of Review:

The appellate court gives almost total deference to the trial judge's determination of historical facts and of mixed questions of law and fact that rely on credibility determinations if they are supported by the record. *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997); *Martinez*, 2015 Tex. App. LEXIS 4380, *12–13. The appellate court affords the prevailing party the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from it. *Wade v. State*, 422 S.W.3d 661, 666–67 (Tex. Crim. App. 2013); *Guzman*, 955 S.W.2d at 89. A reviewing court reviews *de novo* the trial court's application of law to a particular set of facts. *Wade*, 422 S.W.2d at 667. The appellate court will uphold the trial judge's ruling if it is correct on any theory of law reasonably supported by the record. *Id*. Because the trial court is the exclusive fact-finder, the appellate court reviews evidence adduced at the suppression hearing in the light most favorable to

the trial court's ruling. *Carmouche v. State*, 10 S.W.3d 323, 327 (Tex. Crim. App. 2000); *State v. Iduarte*, 268 S.W.3d 544, 548 (Tex. Crim. App. 2008). The defendant bears the initial burden of producing evidence to rebut the presumption of proper police conduct. *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005). The defendant satisfies this burden by showing that the search or seizure occurred without a warrant, shifting the burden to the State to show either the existence of a warrant or that the search and seizure was reasonable. *Id*. Absent a showing of an abuse of discretion, the trial court's fact findings should not be disturbed. *Maddox v. State*, 682 S.W.2d 563, 564 (Tex. Crim. App. 1985).

Argument on Issues One, Two, and Three:

This Court recognizes that *Arizona v. Gant*, 556 U.S. 332, 338 (2009) was decided as a limitation to the broad ruling of *New York v. Belton*, 453 U.S. 454 (1981). *State v. Sanchez*, PD-1037-16, 2017 LEXIS 944, *6 (Tex. Crim. App. 2017).

This suppression issue is fact-intensive. The Trial Court heard each witness and argument of counsel. The Trial Court held strong opinions against the warrantless search conducted by the police. The Trial Court did not find the Officers testimony credible as it pertained to the search of the car incident to arrest. See Finding of Fact No. 23. SC5.

This Court failed to consider some of the presented testimony the District Court considered incredible. Specifically, the District Court took note that Mr.

Sanchez was arrested only for traffic warrants (2R55) based on testimony during the hearing. 2R20, 21, 28, 34. The State did not then argue in the Trial Court that the finding of cocaine on Mr. Sanchez person caused him to be implicitly under arrest for possession of controlled substance, thereby justifying a *Gant* search. The State did not then argue that the finding of cocaine on Mr. Sanchez's person constituted *ipso facto* probable cause to search the vehicle. *Gant*, 556 U.S. at 351–54 (J. Scalia's concurring opinion).

Further, the District Court found some of Officer Martinez's testimony to be incredible:

> Q. Isn't it a fact that when officers stop somebody, 99.9 percent of the time, they're nervous?
>
> A. I don't know the statistics, sir, but...
>
> Q. Most of them are?
>
> A. Almost always.
>
> Q. Most of them are?
>
> A. Yes, sir.
>
> Q. So it's nothing unusual for somebody to be nervous?
>
> A. No.
>
> Q. Nothing unusual for somebody to have a fixed stare when an officer is searching?
>
> A. Right.

2R33–34

Q. And how could you tell that there was probably something? Did you see a little trail of cocaine from the car to the defendant?

A. No, I did not.

….

Q. So you had arrested him first, and then you did the search?

A. Right.

Q. And when you did the search, you found this cigarette that he had in his pocket?

A. Yes.

Q. Did you have reason to believe that a weapon might be inside the cigarette pack?

A. Could have been, yes.

Q. A pistol maybe?

A. A pistol, a knife.

Q. Inside the cigarette pack?

A. A knife.

Q. Inside the cigarette pack?

A. Yes.

Q. Okay. And that's why you searched the cigarette pack. That's what–

A. Yes.

2R37.

The Court then had a colloquy with the Assistant District Attorney:

> THE COURT: Okay. So you're saying that any time someone who is stopped -- well, there was no traffic to stop. He was already stopped -- and they find, I'm assuming, a small useable amount of cocaine, there's not been any testimony or evidence of the amount, but I'm assuming, based on the cigarette box, although she said there could have been a weapon in the cigarette box, but it's -- you believe that that justified the search of the vehicle at that point in time?

The Assistant District Attorney responded:

> MR. KAPUR: If the officer does have reason to believe, on a reasonable suspicion standard, that further evidence of the crime that she had just seized could be found within the vehicle itself, yes. And that coincides with the reasoning in Gant. Because Gant reiterates Chimel and specifically states that if the defendant is still under custodial arrest, if evidence has been seized from the defendant on his person and that officer has reason to believe that there's further evidence of the crime in the vehicle --

2R58–59.

This Court also ignored the Appellate Court's affirmance of the Trial Court's findings and failed to recognize the waiver set forth in the Court of Appeals' opinion wherein said Appellate Court held:

> Furthermore, we may not rely on the automobile exception to validate the search because the State did not raise the exception in its brief to this Court. See State v. Woodard, 341 S.W.3d 404, 412 (Tex. Crim. App. 2011) (holding that it is the State's burden to demonstrate that a warrantless search fits into an exception to the warrant requirement). We overrule the State's first issue.

Sanchez, 501 S.W.3d at 171. In footnote 3, the Court of Appeals further properly held:

> We note that even though the State explicitly challenged conclusion of law number six, it did not address conclusion number three, which reads: "[t]he officer did not have probable cause to believe that the vehicle contained evidence of a crime before the search of the Defendant's vehicle."

Sanchez, 501 S.W.3d at 171.

This Court failed to give almost total deference to the trial judge's determination of historical facts and of mixed questions of law and fact that rely on credibility determinations, as said findings were supported by the record. *Guzman*, 955 S.W.2d at 89; *Martinez*, 2015 Tex. App. LEXIS 4380, *12–13. This Court failed to afford Mr. Sanchez the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from it. *Wade*, 422 S.W.3d at 666–67; *Guzman*, 955 S.W.2d at 89. This Court needed to have upheld the trial judge's ruling if it was correct on any theory of law reasonably supported by the record. *Id*. Because the trial court is the exclusive fact-finder, the appellate court reviews evidence adduced at the suppression hearing in the light most favorable to the trial court's ruling. *Carmouche*, 10 S.W.3d at 327; *Iduarte*, 268 S.W.3d at 548.

Further, the Texas Constitution further prohibits this Court from further reviewing the Trial Court’s fact findings. Art. 5, sec. 6(a), Tex. Const. provides:

Art. 5, sec. 6(a), Tex. Const. provides:

> COURTS OF APPEALS; TERMS OF JUSTICES; CLERKS. (a) The state shall be divided into courts of appeals districts, with each district having a Chief Justice, two or more other Justices, and such other officials as may be provided by law. The Justices shall have the

> qualifications prescribed for Justices of the Supreme Court. The Court of Appeals may sit in sections as authorized by law. The concurrence of a majority of the judges sitting in a section is necessary to decide a case. *Said Court of Appeals shall have appellate jurisdiction co-extensive with the limits of their respective districts, which shall extend to all cases of which the District Courts or County Courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law. Provided, that the decision of said courts shall be conclusive on all questions of fact brought before them on appeal or error.* Said courts shall have such other jurisdiction, original and appellate, as may be prescribed by law. (Emphasis added).

The Court of Appeals' affirmance of the Trial Court's decision was final as to any factual issues because said appellate opinion, which adopted the Trial Court's ruling, reviewed and gave deference to the Trial Court resulting in affirmance of its decision.

This Court effectively and unconstitutionally removed that fact-finding authority by the Trial Court and final review of the same by the Appellate Court in violation of Art. 5, sec. 6, Tex. Const. This Court also substituted its judgment for that of the Trial and Appellate Court.

This Court wishes to join the ranks of a single Justice's concurring opinion in the United States Supreme Court's panel of nine jurists. This Court's opinion effectively removes the Trial Court's job as fact finder and the Appellate Court's final review of those facts by the Trial Court. This Court also had to scrounge into other State Court's jurisdictions to find justification for the reversal of long standing principles of fair play and justice, for the un-finding of facts already found by the

Trial Court as affirmed by the Appellate Court, and for the reversal of Trial Courts' judicial power and authority to exercise its discretion and discernment in determining the credibility of testifying witnesses who appear before it. *Gant*, 556 U.S. at 351–54 (J. Scalia's concurring opinion); *Owens v. Commonwealth*, 291 S.W.3d 704, 707-708 (Ky. 2009).

As such, Appellee requests that this Court re-visit its unanimous opinion in this case, reverse its decision, and enter a new opinion affirming the decision of the Appellate and Trial Court.

CONCLUSION AND PRAYER

As a result of the foregoing, Mr. Sanchez prays that this Court withdraw its opinion and enter a new opinion affirming the decision of the Court of Appeals.

Respectfully submitted,

Law Office of Victoria Guerra
3219 N. McColl Rd.
McAllen, Texas 78501
(956) 618-2609
(956) 618-2553 (fax)

By: */s/ Victoria Guerra*
Victoria Guerra
Appellate Attorney for Appellee
State Bar No.: 08578900

CERTIFICATE OF SERVICE

On this day, the foregoing document was delivered to Appellant's counsel Michael Morris via email: Michael.Morris@da.co.hidalgo.tx.us the State Prosecuting Attorney, Lisa McMinn via email: Lisa.McMinn@SPA.texas.gov

SIGNED this 1st day of November, 2017.

/s/ Victoria Guerra
Victoria Guerra

CERTIFICATE OF COMPLIANCE

In compliance with TRAP 9.4(i)(3), the undersigned certifies that the number of words in this brief, excluding those matters listed in Rule 9.4(i)(l), is 1,794.

SIGNED this 1st day of November, 2017.

/s/ Victoria Guerra
Victoria Guerra